

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-11996-RGS

ROBERT F. MURPHY, III, et al.

v.

TOWN OF NATICK, et al.

FINDINGS OF FACT AND RULINGS OF LAW
AFTER A NON-JURY TRIAL

May 14, 2009

STEARNS, DJ.

On September 15, 2004, plaintiffs Robert F. Murphy and Brian C. Grassey brought this action against the Town of Natick (Town), the Natick Police Department, and Dennis Mannix, the Natick Chief of Police, on behalf of themselves and other current and former patrol and superior officers employed by the Town. The Amended Complaint alleges violations of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §201, *et seq.* (FLSA). Specifically, plaintiffs allege that they were not paid all of the overtime that they were due for hours worked in excess of forty hours per week.

On September 25, 2007, the court issued a Memorandum and Order on the parties' cross-motions for summary judgment. The court ruled, *inter alia*, that plaintiffs were entitled to have all wage augments included in their regular rate, and to be paid FLSA overtime for performing Town Details. On December 19, 2008, after the parties submitted proposed forms of judgment as instructed, the court ruled that

[c]onsistent with O'Brien v. Town of Agawam, 440 F. Supp. 2d 3, 11-12 (D.Mass. 2006) (Ponsor, J.), plaintiffs' annual salary must be "divided by the annual total of hours that the salary is intended to compensate." Id. The

annual total of hours of contemplated compensation in this case (consistent with the collective bargaining agreement's [CBA] 4-2 schedule) is 1946.56 hours.

Rulings on Objections to Proposed Forms of Judgment, ¶ 1. Defendants filed a motion for reconsideration, which the court allowed in part, but only with regard to this issue. After the parties notified the court that they were unable to resolve the issue on their own, the court held a bench trial on March 30, 2009, for the sole purpose of determining the number of annual hours that the officers' salary is intended to compensate.¹

FINDINGS OF FACT

The court makes the following findings of fact based on the parties' stipulations as supplemented by the credible evidence presented at trial.

1. Negotiated terms and conditions of employment for patrol officers are set forth in the CBA between the Natick Patrol Officers Association (NPOA) and the Town.
2. Article VI of the CBA sets forth the work schedule and states, in pertinent part:
 - a. The employees covered by the Agreement shall work an eight (8) hour day.
 - b. All members of the NPOA except the Administrative Assistant shall be on a 4-2 work schedule. The Police Department shall operate under the so-called four (4) and two (2) work schedule. This schedule provides that an

¹The court rejects defendants' argument that they have been denied due process because plaintiffs' Amended Complaint does not dispute the regular rate set in the CBAs. The parties' dispute over the regular rate need not have been brought in the form of a count in a Complaint. Rather, this is an issue that is part and parcel of the ultimate calculation of defendants' liability under the FLSA. Moreover, the court has given defendants ample opportunity to defend against plaintiffs' arguments, most recently by granting defendants' motion on this very issue and providing them with a bench trial. Defendants are hard-pressed to argue that they have not received sufficient process. Nor does the court accept defendants' argument that this is a matter of contract interpretation best left to the collective bargaining process.

officer shall work four (4) consecutive days and have two (2) consecutive days off.

c. The overtime rate paid to employees covered by this Agreement shall be at a rate of time and one-half their regular hourly rate. Payment of overtime compensation shall be calculated only for those hours worked in excess of 40 hours; and the base hourly rate shall be determined by dividing the weekly salary by 40 hours.

3. The CBAs contain a wage schedule that sets out the annual salary and the weekly wage for each officer. Each officer receives 1/52 of his or her annual salary on a weekly basis, as well as other wage augments, regardless of whether they work five shifts (40 hours) or four shifts (32 hours) under the 4-2 schedule.

4. Under the CBA, patrol officers work a six-week cycle of shifts, as follows: five base shifts of forty (40) hours of work for four consecutive weeks; followed by four base shifts of thirty-two (32) hours of work for two consecutive weeks. This cycle is then repeated.

5. The parties agree that the above 4-2 schedule resulted in 12,096 hours of base shifts per officer from September 4, 2001, to November 6, 2007. Annualized, this amounts to 1946.56 hours of base shifts per year.

6. At all times relevant to this litigation, when patrol officers have worked over and above their regularly scheduled shifts under the 4-2 schedule, they have been paid additional compensation for the additional work.

RULINGS OF LAW

The Supreme Court instructs that the

regular rate refers to the hourly rate actually paid the employee for the normal, non-overtime workweek for which he is employed. In the case of

piece work wages, this regular rate coincides with the hourly rate actually received for all hours worked during the particular workweek, such rate being the quotient of the amount received during the week divided by the number of hours worked.

Walling v. Youngerman-Reynolds Hardwood Co., Inc., 325 U.S. 419, 424 (1945) (internal citations omitted). In this case, the total number of “normal, non-overtime” hours actually worked by the plaintiffs each year is 1946.56 hours. Defendants’ argument that the number of hours contemplated is 2080 “parts company with reality. Moreover, it has the effect of reducing Defendants’ liability by artificially lowering the hourly rate. In addition, Defendants’ approach moves a step towards the fluctuating workweek method explicitly rejected by the First Circuit.” O’Brien, 440 F. Supp. 2d at 11.² The regular rate “is not an arbitrary label chosen by the parties; it is an actual fact. Once the parties have decided upon the amount of wages and the mode of payment the determination of the regular rate becomes a matter of mathematical computation, the result of which is unaffected by any designation of a contrary ‘regular rate’ in the wage contracts.” Youngerman-Reynolds Hardwood, 325 U.S. at 424-425. To the extent that defendants argue that the CBA contemplated 2080 hours of work, the terms of the CBA are not controlling; what matters is the “actual fact” of how the officers were paid. Id. at 424.³

ULTIMATE CONCLUSION OF FACT AND LAW

1. The regular rate shall be determined by dividing the annual salary of each officer

²Defendants reach the 2080 number by multiplying fifty-two weeks by forty hours in reference to Article VI of the CBA, which states that the “base hourly rate shall be determined by dividing the weekly salary by 40 hours.”

³The court does not necessarily agree with defendants’ interpretation of the cited provision in the CBA.

by a denominator of 1946.56.

ORDER

The parties are instructed to make their final damages calculations in accordance with the court's present findings, along with the court's rulings in its September 25, 2007 Memorandum and Order on Cross-Motions for Summary Judgment, and the December 19, 2008 Rulings on Objections to Proposed Forms of Judgment. The parties shall file a joint proposed form of judgment within thirty (30) days of the date of this Order.

SO ORDERED

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE